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APR 17 2008

OFFICE OF PETITIONS

In re Application of
James A. Campbell
Application No.: 09/982592
Filing or 371(c) Date: 10/18/2001
Attorney Docket Number:
DO-047524/P124US/10108968

DECISION ON
PETITION

This is a decision in response to the "Petition to Revive Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a), filed October 30, 2007.

This Petition is hereby dismissed.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed July 19, 2007. The Notice set a two (2) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on October 20, 2007. A Notice of Abandonment was mailed November 13, 2007.

The present petition

Applicant files the present petition and asserts that the Notice was not received. In support of this assertion, Applicant files Affidavit of Barbara Dalbey and the Declaration of Scott Matthews.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of

a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). Applicant lacks item (3).

As to item (3), a showing of non-receipt of an Office communication may form the basis for revival of an application based upon unavoidable delay.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, provides in relevant part:

The showing required to establish nonreceipt of an Office communication must include

- (1) a statement from the practitioner stating that the Office communication was not received by the practitioner
 - (2) a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
 - (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

MPEP 711.03(c)

Analysis

Applicant has failed to demonstrate that the Notice was not received. In addition to the statement from practitioner attesting to non-receipt of the Notice, Applicant must provide a copy of the file jacket and docket records where the nonreceived Notice would have been entered had it been received and docketed. The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statements and/or copies of docket records and file jacket.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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